

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-213665**DATE:** September 24, 1984**MATTER OF:** Booz, Allen & Hamilton**DIGEST:**

1. Issues raised after initial protest was filed are dismissed as untimely because they are new grounds of protest and were not raised within 10 working days of the protester's knowledge of them, as required by GAO Bid Protest Procedures.
2. Protest that cost realism analysis performed by agency was unreasonable is denied where agency generally used rates suggested by Defense Contract Audit Agency and where possible errors resulted in minor cost changes. Allegations of bias in cost realism analysis are not supported by record.
3. Protest that awardee's hiring of an agency employee involved in this procurement during procurement may have biased procurement is denied where record shows no evidence of bias and protester has not provided "hard facts" showing bias.

Booz, Allen & Hamilton (Booz, Allen) protests the award of a contract to Rail Company (Rail) to provide support for the F-18 Program and Avionics Systems Office, under request for proposals (RFP) N00019-82-Q-0010, issued by the Department of the Navy, Naval Air Systems Command (Navy). Booz, Allen argues that the award was improper because the Navy's analysis of the realism of Booz, Allen's proposed costs was flawed and because the Navy did not conduct meaningful cost discussions, since it raised Booz, Allen's proposed cost without resolving the differences with Booz, Allen. Booz, Allen also contends that its proposal may have been compromised and the procurement biased by a Navy employee who had worked on the program and then was hired by Rail during the procurement. Booz, Allen also asserts that Rail should have been barred from competing because it may have performed work under a previous contract, including drafting personnel qualifications for this solicitation, which may have given it an unfair advantage in this procurement.

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We dismiss the protest in part as untimely and deny it in part.

The RFP advised offerors that the contemplated contract would be a cost-plus-fixed-fee contract, with a 3-year term. The solicitation stated that technical factors were of primary importance, but that if technical proposals were essentially equal, award could be made to the low-cost offeror. The solicitation further provided that proposed costs would be evaluated for realism.

After a competitive range determination and discussions, the first best and final offers of Booz, Allen and Rail were evaluated thusly:

	<u>Technical Score</u>	<u>Proposed Cost</u>	<u>Evaluated Cost</u>
Rail	78.8	\$9,856,006	\$10,016,062
Booz, Allen	75.6	\$9,824,541	\$11,118,579

After this evaluation, the Navy discovered that funds were not available for a 3-year contract. The solicitation was amended to provide for 1 base year and two 1-year options. The Navy then asked for second best and final offers. In addition, the Navy provided written statements of cost deficiencies to the offerors. The second best and final offers were evaluated as follows

	<u>Technical Score</u>	<u>Proposed Cost</u>	<u>Evaluated Cost</u>
Rail	77.8	\$9,808,979	\$9,752,743
Booz, Allen	72.1	\$8,803,377	\$9,954,965

Rail was selected for award because it had the highest technical score and the lowest evaluated cost.

We find Booz, Allen's arguments that meaningful cost discussions were not held and that Rail should have been barred from competing to be untimely. Booz, Allen first raised these issues in its comments on the Navy's report--several months after filing its protest. We have held that separate grounds of protest raised after a protest has been filed must independently meet our timeliness standards. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 C.P.D. ¶ 412. Booz, Allen knew of these grounds

of protest at the same time that it learned of the grounds raised in its initial filing at a debriefing. At that time, Booz, Allen knew that Rail had been permitted to compete, notwithstanding its work on a previous contract, of which Booz, Allen was aware. Booz, Allen also knew the amount by which the Navy had raised its proposed cost, and it obviously knew the extent to which cost discussions had been held with it. While Booz, Allen apparently received documents from the Navy after the debriefing that may have provided the basis for some details of its meaningful discussions protest, the basis of the protest was known at the time of the debriefing. Since Booz, Allen did not protest these issues until months after the debriefing they are untimely.

Concerning the Navy's cost realism analysis, Booz, Allen essentially argues that the Navy did not use the General and Administrative (G&A) rate and overhead rate recommended by the Defense Contract Audit Agency (DCAA), but instead arbitrarily used higher rates. Booz, Allen also argues that the Navy improperly increased Booz, Allen's fixed fee so that the same proportionate relationship was maintained between fixed fee and costs as Booz, Allen had proposed. Booz, Allen further contends that the Navy improperly applied the DCAA-recommended rate for average wage increases. Finally, Booz, Allen claims that the Navy was biased against it in the cost analysis.

We have consistently held that, in cost-reimbursement contracts, evaluated costs are a better basis for judging the likely contract cost than are proposed costs. See e.g., Group Operation, Inc., 55 Comp. Gen. 1315 (1976), 76-2 C.P.D. ¶ 79. We recognize that the evaluation of cost proposals is inherently subjective due to the conjectural nature of proposed costs. Consequently, the evaluation of proposed costs requires the exercise of informed judgment on the part of procurement personnel. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. Therefore, in reviewing cost realism determinations, we will accept the agency's judgment unless the protester shows it to be clearly unreasonable. Id. at 28.

In evaluating Booz, Allen's proposed costs, the Navy used an overhead rate of 21 percent, rather than the 14.1 percent proposed by Booz, Allen, and a G&A rate of 10 percent, rather than the proposed 9 percent. According

to the Navy, the DCAA audit of Booz, Allen's second best and final offer recommended a wide range of possible overhead rates. The Navy states that it contacted DCAA by telephone and asked for a firmer rate to apply, and that the rates recommended by a named DCAA auditor were 20-22 percent for overhead and 10 percent G&A. A handwritten note by a Navy employee states that these rates were provided over the telephone by DCAA. The Navy states further that it asked for a confirmation of the rates in writing several times and finally received the confirmation in a DCAA memorandum, which states, in pertinent part:

"Our estimate of 20 to 22 % for an indirect rate in the Logistics Support Center pool remains the same and again is based upon a confirmed award assigned to the pool. As we informed you before, any additional awards assigned to the pool could change an indirect rate significantly depending on the magnitude of a base used to allocate the indirect expenses."

Booz, Allen contends that DCAA never provided the 21-percent overhead and 10-percent G&A rates orally and that the above-quoted statement does not confirm the rates. Booz, Allen claims that the DCAA employee that the Navy says gave it the rates denies that she provided those rates. Booz, Allen states that, if asked by GAO, she would provide an affidavit to that effect. Booz, Allen also argues that the above-quoted statement does not confirm the rates used by the Navy. At the time that Booz, Allen was competing for this contract, it was awarded another large contract. The Logistics Support Center and the proposed rates were predicated on Booz, Allen being awarded that contract and this one. Booz, Allen points out that the above-quoted statement states that the 20-22-percent overhead is based on the confirmed award and that an additional award could drop the rate significantly. By using the 20-22-percent rate, the Navy was improperly assuming that Booz, Allen would not win this contract and reduce the rate. Booz, Allen also notes that the 10-percent G&A rate is not in writing anywhere in the record other than in the handwritten note by a Navy employee.

We think that there is really no dispute as to what is referred to in the quoted statement. As Booz, Allen argues, that statement provides a 20-22-percent overhead rate based on the award of the other contract for which

Booz, Allen was competing. The Navy does not argue otherwise. We do not think, however, that it was unreasonable for the Navy not to reduce the overhead rate based on the assumption that Booz, Allen would win this contract. The statement says that the rate could drop if another contract is added to the pool, not that it will drop. Additionally, the statement provides no other rate that the Navy could apply. As the Navy points out, DCAA audits are advisory only; the degree to which they are used is a matter for the contracting officer to decide. Robert E. Derecktor of Rhode Island, Inc.; Boston Shipyard Corp., B-211922, B-211922.2, Feb. 2, 1984, 84-1 C.P.D. ¶ 140. Booz, Allen has not shown that a lower rate should have been used or that the Navy's rate was too high. Essex Electro Engineers, Inc., B-206012.3, Oct. 4, 1982, 82-2 C.P.D. ¶ 307. In any event, as discussed above, such rates are advisory only.

Booz, Allen also argues that the Navy's increase of its fee in proportion to the amount that the Navy increased its costs is improper because it assumes an illegal cost-plus-percentage-of-cost contract. The Navy argues that this was done only for evaluation purposes, and that does not fall within the prohibition. We find that the Navy should not have increased the fee. The purpose of a cost realism analysis is for the contracting agency to have an as accurate as possible picture of what the contract will ultimately cost. Since the fee is fixed as proposed, it is irrational to increase it in a cost realism analysis because it cannot increase during contract performance. However, this error resulted in such a small increase in cost that it is inconsequential.

Booz, Allen also argues that the Navy misapplied DCAA's recommended average wage increase rates for direct labor. We have examined the direct labor costs suggested by DCAA and those used by the Navy and, while the Navy costs are higher, they are very close. We note that the DCAA audit report stated that the direct labor costs might be higher than that recommended by the audit report. In light of that, we cannot say that the Navy's analysis in this area was clearly unreasonable.

Booz, Allen cites a handwritten document entitled "Footnotes," in which a Navy employee states, in relation to Booz, Allen's first best and final offer, that Booz, Allen may be "buying in" and that revisions may be needed in Booz, Allen's cost accounting standards disclosure

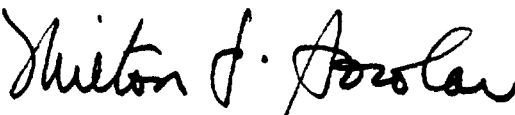
statement. Booz, Allen contends that these are incorrect statements which show bias against Booz, Allen.

There is no evidence in the record that those statements played any part in the cost evaluation. In fact, the record shows the opposite--that the cost evaluation did not consider them. Consequently, we see no evidence of bias.

In summary, we find that the Navy's cost realism analysis was reasonable.

We note that Booz, Allen's own calculation of its costs, using its version of DCAA's recommendations, shows its evaluated costs as only \$66,085 less than Rail's evaluated costs. Since Rail's technical proposal was superior to Booz, Allen's and technical factors were of primary importance, we could not say that award to Rail would be improper, even if Booz, Allen's figure is used in the cost comparison.

Finally, Booz, Allen argues that a Navy employee hired by Rail during the procurement might have had access to Booz, Allen's proposal and might have compromised it, thus biasing the procurement. Booz, Allen provides no evidence to that effect. The Navy states that the person in question did not have access to proposals. The Navy Inspector General found that there was no evidence supporting Booz, Allen's accusations. We have held that the opportunity for bias is not a sufficient basis to question an award of a contract, but that the protester must provide "hard facts" showing actual bias. Pinkerton Computer Consultants, Inc., B-212499.2, June 29, 1984, 84-1 C.P.D. ¶ 694. Booz, Allen has provided no such evidence, nor is it otherwise available in the record.

for 
Comptroller General
of the United States